

Deficiency Progress Report – Update 3

Report Submitted: October 16, 2009

CUPA: San Mateo County Environmental Health Division

Evaluation Date: December 16 and 17, 2008

Evaluation Team:

Kareem Taylor, Cal/EPA

Jeff Tkach, CalEMA (formerly OES)

Corrected Deficiencies: [1](#), [2](#), [3](#), [4](#), [5](#), [6](#)

[All deficiencies have been corrected.](#)

1. **Deficiency:** The CUPA's FY 2007/2008 Annual Summary Reports contained some incorrect information.
 - The Annual Single Fee Summary Report (Report 2) shows that the CUPA's total CalARP stationary sources are 15; however, it also shows that total businesses subject to the CalARP surcharge are 19. There appears to be a typo in the "Counts" section of report 2 for the CalARP program.
 - The Annual Enforcement Summary Report (Report 4) shows "0" facilities with violations for the business plan and CalARP program elements even though enforcement actions have been implemented.

Preliminary Corrective Actions: By February 17, 2009, the CUPA will complete its revised FY 2007/2008 Annual Summary Reports

The CUPA will submit a copy to Cal/EPA.

CUPA's 1st Update (3-17-09): The first bullet item for Deficiency 1 was corrected during the December 2009 CUPA Evaluation. I checked with our fiscal staff and determined that we had neglected to inactivate the CalARP surcharge for four stationary sources that were eliminated from the CalARP Program due to below threshold quantities of regulated substances. This correction is reflected in the revised Annual Single Fee Summary Report (Report 2) submitted with this Progress Report.

Please see the attached revised Annual Enforcement Summary Report (Report 4).

Cal/EPA's 1st Response: Due to the corrective actions, Cal/EPA considers this deficiency corrected.

2. **Deficiency:** The CUPA's Inspection and Enforcement (I and E) plan does not contain a schedule of inspection frequencies for all program elements.

Preliminary Corrective Actions: This deficiency was corrected during the evaluation. Inspection frequencies were provided for all program elements during the December 2008 CUPA Evaluation.

3. **Deficiency:** The CUPA does not have financial management procedures that includes the following:

- A single fee system in compliance with Title 27, section 15210;
- A fee accountability program in compliance with Title 27, section 15220; and
- A surcharge collection and reimbursement program in compliance with Title 27, section 15250.

Preliminary Corrective Actions: By March 17, 2009, the CUPA will complete its financial management procedure that is in compliance with Title 27, section 15180 (e)(5).

The CUPA will submit a copy to Cal/EPA along with its first progress report.

CUPA's 1st Update (3-17-09): A revised Financial Management Procedure is attached for your review.

Cal/EPA's 1st Response: Due to the corrective actions, Cal/EPA considers this deficiency corrected.

4. **Deficiency:** In some cases, the CUPA is not following-up and/or documenting return to compliance (RTC) for businesses cited for violations in their inspection reports and notices of violation. Out of 16 files reviewed by Cal/EPA, 3 files either did not contain documentation of RTC or CUPA follow-up documentation did not contain sufficient detail to determine if all cited violations have been corrected. Below are some examples of businesses cited for violations, but documentation of RTC was either insufficient or not found:

- San Carlos Service and Tune Up Center – inspected 2-19-08
- D'Garcis Auto Body – inspected 8-27-08
- Machinery and Equipment Co – inspected 9-28-07

Documenting facility RTC and CUPA follow-up actions is required as part of the CUPA's implementation of its I and E plan. In addition, this information is required for the CUPA's Annual Summary Reports.

Preliminary Corrective Actions: By March 17, 2009, the CUPA will follow-up with businesses cited for violations and document RTC actions. In addition, the CUPA will include the disposition of all previously cited violations (corrected or not) in the reinspection reports.

On the first progress report, the CUPA will submit to Cal/EPA an action plan as to how it will promote consistency in its follow-up actions.

CUPA's 1st Update (3-17-09): The specialists in each CUPA element and the enforcement specialist are meeting to develop refresher training for citing violations and appropriate follow-up procedure. The training is scheduled for mid-May to accommodate newly hired staff beginning in April. In addition, we will be moving toward automated Notice of Violation Letters. These letters will be generated and automatically sent to facilities that remain in violation beyond their comply by date. In the interim, inspectors will receive monthly reminders of their open violations that have exceeded their comply by date.

Cal/EPA's 1st Response: The CUPA's action plan is satisfactory and positive progress is being made of this deficiency. On the next progress report, please report the total number of facilities with violations that are beyond their "comply by" date that have not been followed-up on. Also, update Cal/EPA on the progress of the staff training and the automate NOV letter system. Cal/EPA requires additional updates to verify correction of this deficiency and suggests changing the corrective action date to September 17, 2009. Please contact Cal/EPA to confirm if this is acceptable.

CUPA's 2nd Update: Enforcement training was held on May 12 and June 9. This training covered appropriate violation follow-up as well as a review of violations for the Hazardous Materials Business Plan and Underground Storage Tank Programs. The violation review for Hazardous Waste and Tier Permitting will occur in July. As we are not currently citing many Cal ARP or Aboveground Storage Tank Program violations, the training for these programs will occur later this year/early next year.

There are currently 279 facilities that are out of compliance. Of these 153 have had follow-up and should be resolved in the near future. On June 1, inspectors received their first violation report in line with the May 12 enforcement training. We therefore expect the remaining facilities to have follow-up activity in the near future.

The NOV automation is still progressing. The Program Specialist are finalizing the code language that will be placed on all of the letters.

Cal/EPA's 2nd Response: The CUPA continues to make positive progress toward correcting this deficiency. On the next progress report, please report the status of the 126 facilities that have not been followed-up on.

CUPA's 3rd Update (10-16-09): All of the facilities that were reported in the previous update have been brought into compliance, are actively working with CUPA inspectors to get back into compliance, or have been referred to the District Attorney for prosecution. We continue to work with our IT support to finalize a letter that can be automatically generated by our database. Our IT support is also working to prepare our system for an upgrade to Envision Connect early next year, as well as merging some of our information into CERS. Therefore the letter automation may not be complete until mid-2010. Until this is up and running the enforcement specialist is monitoring violation activity and verifying follow-up on any violations that are out of compliance over 90 days.

Cal/EPA's 3rd Response: Cal/EPA considers this deficiency corrected.

5. **Deficiency:** The CUPA is not requiring all businesses subject to the hazardous materials reporting requirements to annually submit their inventory or certification statement of no-change. 10 of the 17 facility files reviewed did not contain a current annual inventory or annual certification of no change.

Preliminary Corrective Actions: By March 17, 2009 the CUPA will submit an action plan to Cal/EPA outlining how the CUPA intends to maintain annual inventory certifications among businesses subject to annual inventory requirements. The CUPA will implement the action plan.

CUPA's 1st Update (3-17-09): During the evaluation, I discussed our understanding that an inspection report documenting the status of the HMBP was one method for a business to annually certify the accuracy and completeness of the HMBP. This understanding resulted from discussions with State OES evaluators during the previous CUPA Evaluation. Once I discussed the method of annual certification expected by the current evaluator, I modified the procedure that had been in place for the annual certification.

Within two weeks of the December 2009 CUPA Evaluation, I had instructed all inspection staff that businesses must submit a HMBP update annually or a signed HMBP Annual Certification form, no exceptions. If the business fails to annually comply with this certification requirement, then inspection staff will issue a Notice to Comply for a minor violation. Documentation for the annual certification and any associated violations will be kept on file.

Cal/EPA's 1st Response: Please refer to CalEMA's response. CalEMA requires additional updates to verify correction of this deficiency and suggests changing the corrective action date to September 17, 2009. Please contact Cal/EPA to confirm if this is acceptable.

- **CalEMA's Response:** The CUPA has taken the proper actions in order to correct this deficiency. In the next progress report, the CUPA will report on the progress of this deficiency.

CUPA's 2nd Update (6-11-09): Hazardous materials inspectors are currently documenting a minor violation for failure to submit an annual HMBP update or annual certification form. Once the inspector identifies this violation they issue Notice to Comply with a 30-day time period for corrective action. These violations are being cleared from our violation tracking system once we receive an updated HMBP or annual certification form. Failure to correct the violation leads to the issuance of a Notice of Violation and additional enforcement action as needed. The Program Specialist for the HMBP Program will continue to work with the inspectors to develop a consistent and standardized approach to correcting this deficiency.

Cal/EPA's 2nd Response: Please refer to CalEMA's response.

- **CalEMA's Response:** With the next quarterly report, please update your progress. Report the estimated percentage of inventories or certifications received this year from the business plans facilities.

CUPA's 3rd Update (10-16-09): This update is mostly the same as the 2nd update for this deficiency. Since January 1, 2009 through early October, 2009, inspectors have issued eighty minor violations for failure to comply with the HMBP Annual Certification requirement. Of these eighty minor violations, forty nine have been corrected. Nearly all of the remaining outstanding violations are still within the thirty-day time period for corrective action.

At this time, all inspectors are issuing minor violations for failure to comply with the annual certification requirement. If possible, inspectors will issue a minor violation and note on the same inspection report that the violation was corrected during the inspection.

Cal/EPA's 3rd Response: Cal/EPA and Cal EMA considers the deficiency corrected.

- **CalEMA's Response:** The CUPA has instituted an action plan and has made substantial progress towards full compliance.
- 6. Deficiency:** The CUPA is not requiring all businesses, subject to the hazardous materials business plan to certify and review their business plan every 3 years. 6 of 17 Facility Files reviewed did not have their business plan reviewed within the last 3 years.

Preliminary Corrective Actions: By March 17, 2009, the CUPA will submit an action plan to Cal/EPA outlining how the CUPA intends to maintain business plan review and update within the state mandated 3 year period for businesses subject to the Hazardous Materials Business Plan. The CUPA will implement the action plan.

CUPA's 1st Update (3-17-09): The 3-year HMBP certification is a more in depth HMBP review and certification that covers the entire HMBP including the Emergency Response and Employee Training Sections. Similar to the annual certification, this 3-year certification must be addressed by the business submitting a complete HMBP that includes the above referenced sections or by submission of a certification form.

We have modified the HMBP Annual Certification form to include a check box that indicates that the certification is for a 3-year certification. If the business fails to submit a revised/updated HMBP or the one page HMBP Annual/Triennial Certification form at the 3-year anniversary date, they will be issued a Notice to Comply for a minor violation. Documentation of the triennial certification and any associated violations will be kept on file.

Cal/EPA's 1st Response: Please refer to CalEMA's response. CalEMA requires additional updates to verify correction of this deficiency and suggests changing the corrective action date to September 17, 2009. Please contact Cal/EPA to confirm if this is acceptable.

- **CalEMA's Response:** The CUPA has taken the proper actions in order to correct this deficiency. In the next progress report, the CUPA will report on the progress of this deficiency.

CUPA's 2nd Update (6-11-09): Hazardous materials inspectors are currently documenting a minor violation for failure to review and certify the HMBP every three years. Once the inspector identifies this violation they issue Notice to Comply with a 30-day time period for corrective action. These violations are being cleared from our violation tracking system once we receive the complete HMBP or annual certification form with the triennial review/certification box checked. Failure to correct the violation leads to the issuance of a Notice of Violation and additional enforcement action as needed. The Program Specialist for the HMBP Program will continue to work with the inspectors to develop a consistent and standardized approach to correcting this deficiency.

Cal/EPA's 2nd Response: Please refer to CalEMA's response. Cal/EPA and Cal EMA considers this deficiency corrected.

- **CalEMA's Response:** If these review certifications are being obtained at the time of inspection, all of the business plans should be up-to-date by the next CUPA evaluation. That having been said, the CUPA needs to

keep in mind that this review is the HANDLER's responsibility, not the CUPA's. The 3-year review and the review done by the CUPA at the time of inspection are separate and parallel processes.

With the progress the CUPA has made, Cal EMA considers this deficiency corrected.